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EXAMINER	
GOLIGHTLY, ERIC WAYNE	
ART UNIT	PAPER NUMBER
1792	

NOTIFICATION DATE	DELIVERY MODE
12/07/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary	Application No.	Applicant(s)	
	10/581,250	ECKER ET AL.	
	Examiner	Art Unit	
	Eric Golightly	1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 September 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10* is/are pending in the application.

4a) Of the above claim(s) *3 and 8-10* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 2 and 4-7* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *31 May 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *31 May 2006*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicants' response with amendment and election with traverse of Species 1 (alleged by applicants to include claims 1, 2, 4-7 and 10) in the reply filed on 9/21/2009 is acknowledged. The traversal is on the ground(s) that examination of both claimed invention together would not present a serous burden on the U.S. Patent and Trademark Office.

This is not found persuasive because the present application is a national stage entry of PCT/EP05/00483371, i.e., it is a submission under 35 USC 371. Thus, the restriction is based upon a lack of unity under the PCT. As stated in the prior Office action, the species do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: the special technical feature of Species 1 is that the capacity of the exhaust-air fan depends on the operating state of the dishwasher and this feature is not present in Species 2. The special technical feature of Species 2 is that the capacity of the exhaust-air fan depends on the position of the closing elements and this feature is not present in Species 1. Therefore, unity of invention is lacking and restriction of the species is clearly proper.

It noted that applicants' allegation that joinder of the species would not present a serious burden to the U. S. Patent and Trademark Office is not agreed with here. Such allegations relied on the unsupported assumption that the

search and the examination of both species would be coextensive. Further, while there may be some overlap in the searches of the two species, there is no reason to believe that the searches would be identical. Therefore, additional work would be involved in searching and examining both species together.

Moreover, applicants' assertion that elected Species 1 includes claim 10 is not persuasive. Claim 10 teaches a process wherein the capacity of the exhaust-air fan depends on the position of the closing elements, which falls into the category of non-elected Species 2. Thus, claim 10 is deemed non-elected.

Claims 3 and 8-10 withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim.

The requirement is still deemed proper and is therefore made FINAL.

Information Disclosure Statement

2. Regarding the IDS filed on 5/31/2006, the listing of references in the Search Report is not considered to be an information disclosure statement (IDS) complying with 37 CFR 1.98. 37 CFR 1.98(a)(2) requires a legible copy of: (1) each foreign patent; (2) each publication or that portion which caused it to be listed; (3) for each cited pending U.S. application, the application specification including claims, and any drawing of the application, or that portion of the application which caused it to be listed including any claims directed to that portion, unless the cited pending U.S. application is stored in the Image File

Wrapper (IFW) system; and (4) all other information, or that portion which caused it to be listed. In addition, each IDS must include a list of all patents, publications, applications, or other information submitted for consideration by the Office (see 37 CFR 1.98(a)(1) and (b)), and MPEP § 609.04(a), subsection I. states, "the list ... must be submitted on a separate paper." Therefore, the references cited in the Search Report have not been considered.

Applicants' statement that a search report of a foreign office provides a concise explanation for the non-English references (remarks at page 2, second and third paragraphs) is only partially relevant. The notice of DO/EO acceptance mailed on 2/26/2007 does not indicate receipt of the non-English references and they do not presently appear to be on file. Thus, the requirements of MPEP 1893.03(g) are not satisfied. Two of the non-English references, DE 19644438 to Woerter and DE 2253624, are briefly discussed in the present specification and in an English translation of the IPRP filed on 2/27/2007 and are accordingly considered to that extent. A copy of DE 19644438 to Woerter is placed on the record herein.

Applicants are advised that the date of submission of any item of information or any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the IDS, including all "statement" requirements of 37 CFR 1.97(e). See MPEP § 609.05(a).

Claim Objections

3. Claims 5 and 7 are objected to because of the following informalities:

Regarding claim 5, the phrase "speed-control means is designed as a frequency converter or by an electric drive" in line 2 should be replaced with "speed-control means comprises a frequency converter or an electric drive" or the like.

Claim recites "the washing zones" in line 2, which should apparently be replaced with "the at least one washing zone", as in claim 1, line 1.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1, 2 and 4-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

Claim 1 recites the phrase "and/or" three times in line 2 and once more in line 4, such that it is unclear what structure is required. Depending on the interpretation, some or even none of the structure is required. It appears that the intended meaning may at least require a wash zone and at least one of the latter recited features, and this meaning will be used for purposes of examination.

Claim 1 recites the limitation "the suction extraction" in lines 3 and 4, "the overall quantity" in line 4, "the wash ware" in line 6 and "the operating state" in lines 6 and 7. There is insufficient antecedent basis for these limitations in the claim.

Claim 2 recites the limitation "the capacity" in lines 1 and 2 and "the exhaust-air quantity" in line 2. There is insufficient antecedent basis for these limitations in the claim.

Claim 2 teaches that a "capacity of an exhaust-air fan ... in a heat-recovery device can be controlled in dependence on the operating state of the dishwasher" but does not positively recite the dishwasher as comprising a fan or heat-recovery device. Thus, it is not clear whether or not the fan and heat-recovery device are part of the required structure of the dishwasher.

Claim 4 teaches that a "capacity of the exhaust-air fan in the heat-recovery device can be varied via a speed-control means in dependence on the operating state of the dishwasher" but does not positively recite the dishwasher as comprising a speed-control means. Thus, it is not clear whether or not the speed-control means is part of the required structure of the dishwasher.

Claim 6 recites the limitation "being controlled directly or indirectly by the wash ware", which renders the claims indefinite for two reasons. First, it is unclear what the word "being" modifies -- the process? the dishwasher? extraction of air? the operating state? Second, it is not clear what is meant by "directly or indirectly by the wash ware".

Claim 7 recites the limitations "the closing elements" in line 1 and "these regions" in line 4. There is insufficient antecedent basis for these limitations in the claim. The intended meaning of the latter limitation appears to be "zones" rather than "regions", and this meaning will be used for purposes of examination.

Regarding claim 7, the recitation recites a status of closing elements when the washing zones, rinsing zone, and drying zone are switched off. However, neither the closing elements nor the zones appear to be required by claim 1.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1 is rejected under 35 U.S.C. 102(b) as being anticipated by DE 19644438 to Woerter (hereinafter "Woerter").

Woerter teaches a conveyor dishwasher (abstract) having at least one washing zone (Fig. 1, ref. 28 and 40), a rinsing zone (Fig. 1, ref. 56) and a drying zone (Fig. 1, ref. 68).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicants are advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 2, 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woerter (DE 19644438) in view of US 4,247,158 to Quayle (hereinafter "Quayle").

Regarding claim 2, Woerter discloses a dishwasher including an exhaust-air fan (Fig. 1, ref. 96) and a heat-recovery device (Fig. 1, ref. 82, 90 and 92) but does not explicitly teach that the capacity of the fan, and thus the exhaust-air quantity withdrawn, can be controlled in dependence on the operating state of the dishwasher. Quayle teaches a dishwasher airflow drying system (abstract) and discloses a fan (Fig. 2, ref. 31 and col. 3, lines 27 and 28) which can be controlled in dependence on an operating state of the dishwasher (col. 8, lines 1-26), which is disclosed as advantageously enhancing the control of escaping hot-moist air (col. 1, lines 51-53). It would have been obvious to one of ordinary skill in that art at the time of the invention to use an exhaust-air fan wherein the capacity of the fan, and thus the exhaust-air quantity withdrawn, can be controlled in dependence on the operating state of the dishwasher as per the system of the Quayle teaching in the dishwasher as per the Woerter teaching in order to enhance the control of escaping hot-moist air.

Regarding claims 4 and 5, Woerter and Quayle do not explicitly teach a dishwasher including a frequency converter or an electric drive with a multiple coil. Frequency converters are known in the art as effective for controlling the speed of fans and the skilled artisan would have found it obvious to include a frequency converter as a speed-control means of the fan in the dishwasher as per the Woerter/Quayle teachings with a reasonable expectation of success. It is noted that multiple coil electric drives are also known in the art as effective for adjusting fan speeds and the skilled artisan would have found it obvious to include a multiple coil electric drive as a speed-control means of the fan in the

dishwasher as per the Woerter/Quayle teachings with a reasonable expectation of success.

12. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Quayle (US 4,247,158) in view of Woerter (DE 19644438).

Quayle teaches a process for operating a dishwasher (abstract) and discloses a extracting air from the dishwasher depending on the operating state of the dishwasher (col. 8, lines 1-26)

Quayle does not explicitly teach performing the process wherein the dishwasher is a conveyor dishwasher, and discloses blowing the air rather than using suction. Woerter discloses a process of using a conveyor dishwasher as in claim 1 and the skilled artisan would have found it obvious to try performing the process as per Quayle wherein the dishwasher is a conveyor dishwasher as per claim 1, such as per the method of the Woerter teaching, with a reasonable expectation of success since there are only three kinds of dishwashers: slidable rack, drawer and conveyor. Further, the skilled artisan would have found it obvious to modify the process such that the air is extracted air suction instead of via blowing with a reasonable expectation of success since these are known equivalents for extracting air. It can be reasonably expected that a process as per the Quayle/Woerter teachings would be performed in order to treat wash ware, which reads on the wash ware indirectly controlling the process.

13. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Quayle (US 4,247,158) in view of Woerter (DE 19644438) and in further view of US 5,660,195 to Taylor, Jr. et al. (hereinafter "Taylor")..

Quayle and Woerter do not explicitly teach the process wherein closing elements are wholly or partially closed when a washing zone is switched off, a rinsing zone is switched off and a drying zone is switched off and when there is no wash ware in the washing, rinsing and drying zones. Taylor teaches a method of using a dishwasher (abstract) wherein the dishwasher includes a closing element (Fig. 2, ref. 28 and col. 3, line 62), which is disclosed as advantageously providing venting in a controlled manner via a gradual and quiet transition between open and closed states (col. 1, lines 55-58). It would have been obvious to the skilled artisan to perform the method as per the Quayle/Woerter teachings wherein the dishwasher includes a closing element as in the machine used in the process as per the Taylor teaching with a reasonable expectation of success venting in a controlled manner via a gradual and quiet transition between open and closed states. Further, the skilled artisan would have found it obvious to try the process wherein the closing elements are wholly or partially closed when a washing zone is switched off, a rinsing zone is switched off and a drying zone is switched off and when there is no wash ware in the washing, rinsing and drying zones with a reasonable expectation of success in order to inhibit contamination from entering the vent, since there are only three possible positions for the closing element: completely closed, partially closed or completely open,

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicants' disclosure. US 2002/0021051 to Jacobsen discloses a frequency converter. US 2002/0175582 to Lopatinsky et al. discloses an electric drive. US 4,184,500 to Herbst discloses a dishwasher vent closing arrangement. US 3,658,075 to Jacobs discloses a dishwasher having improved condensation means.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Golightly whose telephone number is (571) 270-3715. The examiner can normally be reached on Monday to Thursday, 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Kornakov can be reached on (571) 272-1303. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EWG
/Michael Kornakov/
Supervisory Patent Examiner, Art Unit 1792